

A U S T I N C I T Y C O U N C I L
AGENDA



Thursday, August 31, 2006

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**Telecommunications & Regulatory Affairs
 RECOMMENDATION FOR COUNCIL ACTION**

ITEM No. 27

Subject: Approve an ordinance denying a rate increase filing of Atmos Energy Corporation, Mid-Tex Division; requiring reimbursement of municipal rate case expenses by the regulated utility; and providing notice of this ordinance to Atmos Energy Corporation, Mid-Tex Division.

Fiscal Note: No fiscal impact.

Additional Backup Material
 (click to open)
 Ordinance

For More Information: Rondella Hawkins, Manager; (512) 974-2422
Prior Council Action: June 22, 2006, by Ordinance No. 20060622-061; May 25, 2006, Ordinance No. 20060525-50; May 25, 2006, Resolution No. 20060525-051

On June 22, 2006, by Ordinance No. 20060622-061, the City suspended the effective date of Atmos's proposed rate increase from July 5, 2006 to October 3, 2006.

Based on Company-provided information included in the initial filing, Atmos's proposal would result in an average monthly increase per customer for approximately 4,800 customers within the City of Austin as follows:

Residential - \$ 4.02 or approximately 5.36% Commercial - \$ 17.16 or approximately 5.25 % Industrial - \$ 7.10 or approximately .21%

The City thereafter joined a coalition of cities, known as Atmos Texas Municipalities ("ATM"). ATM hired rate experts to evaluate and make recommendations regarding the proposed rate increase. While ATM's experts will not conclude their investigation until September 15, 2006, based on current information, they recommend that Atmos is not entitled to an increase in rates.

These experts have determined that the rate increase proposed by Atmos is not just and reasonable based on the following:

Request seeks an excessive rate of return of 11.5%;

Request artificially decreases debt and increases equity;

Request seeks excessive levels of infrastructure adjustments for its Gas Reliability Infrastructure Program ("GRIP"); and

Request proposes a radical change in rate design for residential customers, which promotes waste of natural gas and shifts costs to low use customers.

The 11.5% rate of return proposed by Atmos is 135 basis points more than the 10.12% rate of return considered

to be reasonable in Atmos's most recent rate case before the Georgia Public Service Commission.

Atmos's proposal treats some of its debt (at a cost of 5% to 6%) as equity (at a cost of 9% to 10.5%), artificially inflating the cost of equity and thereby increasing the overall return on investments and making the rate increase request considerably larger than justified.

Some of the GRIP adjustments proposed by Atmos have nothing to do with capital investment for infrastructure improvements related to safety and reliability. Instead, GRIP adjustments include the purchase of new computers, office furniture, signage for trucks and other vehicles and telecommunications systems. Atmos has proposed a rate design that unjustly shifts costs of the proposed increase to low use residential customers by increasing the residential customer charge and base rate cost for the first 3 Mcf of usage. In turn, Atmos has proposed to dramatically decrease the cost of gas above 3 Mcf thereby promoting consumption and waste of a finite natural resource.

The failure of Atmos to provide cost information related to assets of TXU Gas Company prior to the acquisition by Atmos on October 1, 2004, has made it difficult to analyze the components and reasonableness of the requested costs and expenses.

Staff recommends that the Council deny Atmos's rate increase filing made on May 31, 2006 and that Atmos be directed to reimburse all municipal rate case expenses incurred by the City in relation to the filing.

ORDINANCE NO.

AN ORDINANCE DENYING A RATE INCREASE PROPOSED BY ATMOS ENERGY CORPORATION, MID-TEX DIVISION; REQUIRING REIMBURSEMENT OF MUNICIPAL RATE CASE EXPENSES BY THE REGULATED UTILITY; AND PROVIDING NOTICE OF THIS ORDINANCE TO ATMOS ENERGY CORPORATION, MID-TEX DIVISION.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. FINDINGS:

(A) On May 25, 2006, by Resolution No. 20060525-051 the City ordered Atmos Energy Corporation, Mid-Tex Division ("Atmos" or "Company") to show cause regarding the reasonableness of its existing natural gas distribution rates within the City and requiring Atmos to submit a rate filing package based on a test year ending December 31, 2005.

(B) On May 31, 2006, Atmos filed a rate filing package with the City based on a test year ending December 31, 2005, seeking to increase rates by \$60.8 million on a system-wide basis with a proposed effective date of July 5, 2006.

(C) Based on Company-provided information, Atmos' proposal would result in an average monthly increase per customer for approximately 4,800 customers within the City of Austin as follows:

Residential - \$4.02 or approximately 5.36%

Commercial - \$17.16 or approximately 5.25%

Industrial - \$7.10 or approximately .21%

(D) The City has exclusive original jurisdiction under the Gas Utilities Regulatory Act, Texas Utilities Code § 103.001 to evaluate Atmos' proposed rate increase.

(E) As authorized under the Gas Utilities Regulatory Act, Texas Utilities Code § 104.107(a)(1), on June 22, 2006, by Ordinance No. 20060622-061, the City suspended Atmos' proposed effective date of July 5, 2006 to October 3, 2006.

1 (F) The City of Austin thereafter joined a coalition of cities, known as Atmos
2 Texas Municipalities ("ATM"). ATM includes almost all of the cities served by Atmos
in the Austin metropolitan region.

4 (G) ATM has hired experts to evaluate and make recommendations regarding
5 the proposed rate increase.

6 (H) While ATM's experts will not conclude their investigation until September
7 15, 2006, based on current information, they recommend that Atmos is not entitled to an
8 increase in rates.

9 (I) These experts have determined that the rate increase proposed by Atmos is not
10 just and reasonable based on the following:

11 The request seeks an excessive rate of return of 11.5%;

12 the request artificially decreases debt and increases equity;

13 the request seeks excessive levels of infrastructure adjustments for its Gas
14 Reliability Infrastructure Program ("GRIP"); and

15 the request proposes a radical change in rate design for residential
16 customers, which promotes waste of natural gas and shifts costs to low use
customers.

18 (J) The 11.5% rate of return proposed by Atmos is 135 basis points more than
19 the 10.12% rate of return considered to be reasonable in Atmos' most recent rate case
20 before the Georgia Public Service Commission.

21 (K) Atmos' proposal treats some of its debt (at a cost of 5% to 6%) as equity (at
22 a cost of 9% to 10.5%), artificially inflating the cost of equity and thereby increasing the
23 overall return on investments and making the rate increase request considerably larger
24 than justified.

26 (L) Contrary to the plain language and intent of the Gas Utilities Regulatory
27 Act, Texas Utilities Code § 104.301, some of the GRIP adjustments proposed by Atmos
28 have nothing to do with capital investment for infrastructure improvements related to
29 safety and reliability. Instead GRIP adjustments include the purchase of new computers,
30 office furniture, signage for trucks and other vehicles and telecommunications systems.

31 (M) Atmos has proposed a rate design that unjustly shifts costs of the proposed
32 increase to low use residential customers by increasing the residential customer charge
33 and base rate cost for the first 3 Mcf of usage. In turn, Atmos has proposed to
34 dramatically decrease the cost of gas above 3 Mcf thereby promoting consumption and
35 waste of a finite natural resource.

1
2 (N) The failure of Atmos to provide cost information related to assets of TXU
3 Gas Company prior to the acquisition by Atmos on October 1, 2004, has made it difficult
4 to analyze and justify the components and reasonableness of the requested costs and
5 expenses.
6

7 **PART 2.** Based on the above findings, the rate increase proposed by Atmos and filed
8 with the City on May 31, 2006, is denied.

9 **PART 3.** Atmos is directed to reimburse all municipal rate case expenses incurred by
10 the City in relation to the filing.

11 **PART 4.** Notice of this ordinance is hereby provided to Atmos Energy Corporation,
12 Mid-Tex Division.

13 **PART 5.** This ordinance takes effect on September 11, 2006.
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15 **PASSED AND APPROVED**

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19 _____, 2006

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Will Wynn
Mayor

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24 **APPROVED:** _____

David Allan Smith
City Attorney

ATTEST: _____

Shirley A. Gentry
City Clerk